

VOLUME NO. 35

Opinion No. 52

CONSTITUTIONAL LAW — County indebtedness, limitations; COUNTIES — Indebtedness, limitations on; COUNTIES — Indebtedness, elections for, when unnecessary; LEGISLATURE — County indebtedness, duty to limit. Article VIII, section 10, Constitution of Montana; section 16-807, R.C.M. 1947.

HELD: A county may incur single purpose indebtedness up to forty thousand dollars (\$40,000) without approval of a majority of electors voting at a lawful election if such indebtedness together with existing county indebtedness does not exceed five (5) per centum of the assessed value of the county's taxable property.

December 27, 1973

Mr. Gordon R. Hickman
Wheatland County Attorney
Office of the County Attorney
Harlowton, Montana 59036

Dear Mr. Hickman:

I am in receipt of your letter requesting my opinion on the following question:

What amount of money may a county borrow for a single purpose indebtedness, without the approval of a majority of the electors thereof, under the 1972 Montana Constitution and section 16-807, R.C.M. 1947, as amended by Chapter 486, Session Laws of 1973?

Article VIII, section 10, Constitution of Montana, 1972, provides:

The legislature shall by law limit debts of counties, cities, towns, and all other local governmental entities.

This provision became effective, along with most other provisions of the Constitution of Montana of 1972, on July 1, 1973, pursuant to section 1 of the Adoption Schedule, which provided:

This Constitution, if approved by a majority of those voting at the election as provided by the Constitution of 1889, shall take effect on July 1, 1973, except as otherwise provided in section 1 and 2 of the Transition Schedule. The Constitution of 1889, as amended, shall thereafter be of no effect.

In compliance with Article VIII, section 10, *supra*, section 16-807, R.C.M. 1947, as amended by Chapter 486, Session Laws of 1973, sets forth the limit for a county's single purpose indebtedness. Section 16-807, *supra*, provides:

No county must become indebted in any manner or for any purpose to an amount, including existing indebtedness, **in the aggregate exceeding five per centum of the assessed value of the taxable property therein**, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such county are void. **No county must incur any indebtedness or liability for any single purpose to an amount exceeding forty thousand dollars (\$40,000)** without the approval of a majority of the electors thereof voting at an election to be provided by law. (Emphasis supplied)

Section 43-507, R.C.M. 1947, states:

Every statute, unless a different time is prescribed therein, takes effect on the first day of July of the year of its passage and approval.

Since no other effective date was set forth at the time of the enactment of section 16-807, supra, it became effective as amended on July 1, 1973.

In your request you mention two recent Montana Supreme Court decisions which held a county could not incur an indebtedness exceeding \$10,000 without the approval of a majority of the electors. However, in both **Burlington Northern, Inc. v. Flathead County**, _____ Mont. _____, 30 St. Rptr. 684, and **Burlington Northern, Inc. v. Richland County**, _____ Mont. _____, 30 St. Rptr. 697, the indebtedness question arose under prior constitutional and statutory provisions which limited such indebtedness to \$10,000. On July 1, 1973, section 10 of Article VIII of Montana's new constitution, supra, and section 16-807, as amended, supra, became effective and raised the amount of indebtedness a county may incur without an election to \$40,000, provided such indebtedness, together with existing county indebtedness, does not exceed five (5) per centum of the assessed value of the county's taxable property.

THEREFORE, IS IT MY OPINION:

A county may incur a single purpose indebtedness of up to forty thousand dollars (\$40,000) without the approval of a majority of the electors voting at an election provided by law, if such indebtedness together with existing county indebtedness does not exceed five (5) per centum of the assessed value of the county's taxable property.

Very truly yours,

ROBERT L. WOODAHL
Attorney General